



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10-90, 14-58; FCC 17-87]

Connect America Fund, ETC Annual Reports and Certifications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, by eliminating several rules that are either duplicative of other reporting requirements or are simply no longer necessary, the Federal Communications Commission (Commission) streamlines the annual reporting requirements for eligible telecommunications carriers (ETCs) that receive high-cost universal service support. The Commission also re-emphasizes the importance of providing the public with access to non-confidential information filed by ETCs, and it directs the Universal Service Administrative Company (USAC) to work closely with state and Tribal governments and other stakeholders to improve public access to the information that ETCs will continue to file.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket Nos. 10-90, 14-58; FCC 17-87, adopted on July 6, 2017 and released on July 7, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, D.C. 20554, or at the following Internet address: http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0714/FCC-17-87A1.pdf

I. Report and Order

1. In this Report and Order, by eliminating several rules that are either duplicative of other reporting requirements or are simply no longer necessary, the Commission streamlines the annual reporting requirements for eligible telecommunications carriers (ETCs) that receive high-cost universal service support. The Commission also re-emphasizes the importance of providing the public with access to non-confidential information filed by ETCs, and it directs the Universal Service Administrative Company (USAC) to work closely with state and Tribal governments and other stakeholders to improve public access to the information that ETCs will continue to file. In doing so, the Commission reduces ETCs' regulatory burdens while strengthening the tools for program oversight in furtherance of its goal of protecting the high cost universal support program against waste, fraud, and abuse.

2. Discussion. Based on the record before us, the Commission finds that it can eliminate all elements of the Commission's annual high-cost reporting rules on which it sought comment without compromising its ability to monitor whether ETCs are using high-cost universal service support for its intended purpose. The Commission agrees with the vast majority of commenters that note "reporting obligations should be effectively and efficiently tailored to monitoring ETCs' modified service obligations." At the same time, the Commission reiterates the importance of providing access to non-confidential information to the public and to states, U.S. Territories, and Tribal governments.

3. Network outage reporting. First, because the Commission's Network Outage Reporting System (NORS) already collects detailed outage information, and does so in a more timely fashion than the FCC Form 481, the Commission eliminates the rule requiring that ETCs' annual reports include detailed information about any outages affecting voice service for at least 30 minutes that they have experienced in the prior calendar year. Moreover, given the sensitive nature of this data to both national security and commercial competitiveness, most ETCs seek confidential treatment of their outage reporting. Centralizing the Commission's collection of outage information in NORS will reduce the burden on ETCs of filing multiple requests for confidential treatment for the same information. It will also allow USAC to make more of an ETC's Form 481 data publicly available.

4. Most commenters support eliminating this duplicative requirement. The Commission disagrees with those commenters that suggest that reporting this information imposes no additional costs on carriers. Even if a carrier has information on outages readily available, preparing and submitting duplicative documentation entails costs. The Commission also disagrees with suggestions that, because some states have deregulated telecommunications services in their states, the Commission should retain certain federal reporting requirements. Because carriers already have a federal obligation to file this information through NORS, the Commission finds it inappropriate to continue to require carriers to incur additional costs solely to provide states with this information directly where the Commission has determined it is unnecessary for its own high-cost universal service oversight. To the extent that state agencies want network outage information for their own purposes, they can, and some do, obtain such information through their own mechanisms.

5. Unfulfilled service requests. Second, the Commission eliminates the requirement that ETCs report the number of service requests they receive but do not fulfill. The underlying purpose of this rule when adopted was to allow the Commission to monitor rate-of-return carriers' progress in deploying broadband pursuant to the reasonable request standard. Based on the Commission's implementation, however, it finds that the rule as written is not appropriately tailored to further the goal. Absent uniform and clear standards for how individual carriers evaluate such requests, the data reported cannot support any meaningful evaluation. In the Rate-of-Return Reform Order, 81 FR 24282, April 25, 2016, the Commission replaced the reasonable request standard, the primary reason the Commission originally adopted this reporting requirement, with defined broadband obligations. Thus, now most high-cost recipients – particularly rate-of-return carriers regardless of whether they elected to receive model-based support or remain on the reformed support mechanisms – have specific broadband deployment obligations that the Commission will be able to monitor through their annual submission of information about the exact locations to which they built in the prior calendar year. Even if the Commission provided ETCs with additional guidance, this objective metric is a more efficient way to measure compliance than

reporting unfulfilled requests, which requires a subjective determination as to whether to include the data. The Commission therefore eliminates this specific reporting requirement for all ETCs.

6. Most commenters support this outcome. As with the other reporting requirements the Commission is eliminating, and for the same reasons, the Commission disagrees with those commenters that argue that reporting this information imposes no additional costs and that the Commission should continue collecting this information for the use of state commissions. In the Rate-of-Return Reform Order, the Commission directed USAC to provide the public access to ETCs' non-confidential location information and develop an online map that will enable the public to visualize service availability. Because the Commission believes the information USAC will make available online will be more useful to the public and equally useful to state commissions, the Commission also declines to modify the requirement, as one commenter suggests.

7. Complaint reporting. Third, the Commission eliminates the obligation that ETCs annually report the number of complaints per 1,000 subscribers for voice and broadband services. Consumers who have complaints about ETCs can file complaints with the Commission's Consumer and Governmental Affairs Bureau (CGB) or with states. CGB collects detailed information from each complainant, including the location and nature of the complaint. The Commission's experience to date is that the high-level complaint data currently collected on Form 481 is not as useful as the detailed data already collected by CGB through the complaint process, in part because the Form 481 data do not currently contain information about individual complaints. The Commission therefore eliminates this reporting requirement and direct the Wireline Competition Bureau (WCB) to consult with CGB to ensure that the Commission collects the necessary complaint data to adequately measure the performance of carriers receiving universal service funding.

8. Most commenters support elimination of this duplicative requirement. Again, the Commission disagrees with commenters who argue that reporting this information entails no additional costs, and that the Commission should continue collecting this information for the use of state commissions. One commenter expresses support for clarifying terms to make the information more

useful; however, the Commission finds that its existing collection of detailed information from consumer complaints filed with CGB is sufficient for its oversight purposes.

9. Pricing information. Fourth, the Commission eliminates the obligation of ETCs to report annually information regarding the pricing of their voice and broadband service offerings. As implemented in FCC Form 481, ETCs are required to submit information regarding their voice rates as of January 1 of each year, and separately list rates for each wire center to the extent the rates vary, as well as indicate whether service is provided on a flat rate, measured or metered basis. For broadband offerings, ETCs must separately list each service offering that meets or exceeds the Commission's minimum requirements and, if they do not have uniform rates across the study area, report each rate for individual exchanges. The net result is a detailed worksheet with multiple rates listed for each wire center.

10. As a practical matter, the Commission has not made sufficient use of this pricing data to support its continued collection. The Commission primarily relies on the urban rate survey to develop annually the reasonable comparability benchmarks for both voice and broadband services, and annual certifications from providers that their rates do not exceed those benchmarks. The Commission therefore concludes that the public interest would be served by discontinuing this particular information collection.

11. Most commenters support removing this reporting requirement. The Commission disagrees again with commenters arguing that reporting this information requires no additional costs, and that the Commission should continue collecting this information for the use of state commissions. One commenter suggests that carriers only report what is needed to show compliance with the "reasonable comparability" benchmark; as noted above, the Commission finds that it already requires submission of what is needed to show compliance with that benchmark through the urban rate survey and annual certifications.

12. Service quality certification. Fifth, the Commission eliminates the requirement that an ETC certify its compliance with applicable service quality standards and consumer protection rules. Given that ETCs have an independent obligation to comply with all applicable service quality standards and consumer protection rules, the Commission finds that this certification is unnecessary for its oversight

of ETCs. Any failure to comply with rules and requirements can be pursued regardless of whether a certification of compliance with those rules has been made. Both the Commission and USAC already have sufficient authority to investigate, audit, and pursue recovery of high-cost support for violation of program rules.

13. Commenters generally support eliminating this requirement. For the same reasons as stated above, the Commission again disagrees with commenters suggesting that providing this certification would not entail any additional costs, and that the Commission should continue collecting these certifications for states' own oversight purposes.

14. Filing of duplicate FCC Forms 481. Finally, contingent upon USAC's completion of the rollout of an online portal for recipients of high cost services, the Commission will no longer require ETCs to file duplicate copies of Form 481 with the FCC and with states, U.S. Territories, and/or Tribal governments beginning in 2018. In the Rate-of-Return Reform Order, the Commission directed USAC to "timely publish through electronic means all non-confidential high-cost data in open, standardized, electronic formats, consistent with the principles of the Office of Management and Budget's Open Data Policy," and directed WCB "to work with USAC to put appropriate protections in place for ETCs to seek confidential treatment of a limited subset of the information. Entities, such as states and Tribal governments, which already have access to confidentially filed information for ETCs[] within their jurisdiction, will continue to have access to such information through the online database." If USAC completes the rollout of its online portal after the 2018 Form 481 filing date, the Commission will no longer require ETCs to file duplicate copies of Form 481 beginning in 2019. The Commission concludes that centralizing all filing requirements with USAC would benefit state and Tribal governments by reducing the need to sort through, in some cases, dozens of paper documents containing the same information as what will be available more readily through an online tool. The Commission reiterates to USAC the importance of working closely with state and Tribal governments and other stakeholders to provide the public with easy access to non-confidential data filed by ETCs.

15. Only two states and no Tribal governments raised concerns regarding this proposal. Those commenters argue that it would be burdensome for states to actively seek ETCs' reported information from USAC. As others note, it is likely less burdensome for a state commission to log onto USAC's system and access carriers' reports than for ETCs, especially small companies, to submit their reports to the commissions in states in which they operate. Nonetheless, in light of state commenters' concerns, the Commission directs USAC to work with states and Tribal governments to facilitate their access to carriers' submitted data. Other commenters generally express support for removing the duplicate filing requirement, although several commenters expressed some concern about access to ETCs' confidential data provided through USAC's new online system. However, as the Commission explained in the Rate-of-Return Reform Order, "[e]ntities, such as states and Tribal governments, which already have access to confidentially filed information for ETCs[] within their jurisdiction, will continue to have access to such information through the online database"; entities without such access will not newly gain access to confidential information. In light of those commenters' concerns, the Commission reiterates its direction to USAC to ensure appropriate protections for ETCs seeking confidential treatment of specific information, pursuant to Section 0.459 of the Commission's rules, and to make public the non-confidential data it receives. USAC's publishing of non-confidential data will improve the public's access to the data without compromising the confidentiality of sensitive information.

16. At this time, the Commission declines to eliminate any other ETC reporting requirements. Other information the Commission requires ETCs to report is necessary to enable it to fulfill its oversight responsibilities and to protect against waste, fraud, and abuse. Notwithstanding, the Commission will continue to evaluate its reporting requirements to identify other requirements that the Commission may be able to streamline or eliminate at a future point.

17. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection

requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, the Commission has assessed the effects that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) below..

18. As required by the Regulatory Flexibility Act of 1980 (RFA) as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking adopted in March 2016 (Rate-of-Return Reform FNPRM, 81 FR 21511, April 12, 2016). The Commission sought written public comment on the proposals in the Rate-of-Return Reform FNPRM, including comment on the IRFA. The Commission did not receive any relevant comments in response to this IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

19. In this Report and Order, the Commission streamlines the annual reporting requirements for eligible telecommunications carriers (ETCs) that receive high-cost universal service support by eliminating several rules that are either duplicative of other reporting requirements or are simply no longer necessary. The Commission also reinforces the importance of providing the public with access to non-confidential information filed by ETCs and direct the Universal Service Administrative Company (USAC) to work closely with state and Tribal governments and other stakeholders to improve public access to the information that ETCs will continue to file. In doing so, the Commission reduces ETCs' regulatory burden while strengthening the tools for program oversight in furtherance of its goal of protecting the high cost universal support program against waste, fraud, and abuse.

20. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A small-business

concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

21. Small Businesses, Small Organizations, Small Governmental Jurisdictions. The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

22. The Report and Order does not impose any specific reporting, recordkeeping, or compliance requirements for entities, including small entities. Instead, by removing certain reporting requirements, the Report and Order streamlines existing reporting requirements. In particular, the Report and Order eliminates ETCs’ obligations to report (1) network outage information; (2) unfulfilled service requests; (3) the number of complaints received by an ETC per 1,000 subscribers for both voice and broadband services; and (4) pricing for voice and broadband services. The Report and Order also eliminates the requirement that an ETC certify its compliance with applicable service quality standards

and consumer protection rules, as well as the requirement that ETCs must file duplicate copies of Form 481 with the FCC and with states, U.S. Territories, and/or Tribal governments.

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission has considered all of these factors subsequent to receiving substantive comments from the public and potentially affected entities. The Commission has considered the economic impact on small entities, as identified in comments filed in response to the Rate-of-Return Reform FNPRM and its IRFA, in reaching its final conclusions and taking action in this proceeding.

24. In the Rate-of-Return Reform FNPRM, the Commission sought comment on whether to eliminate or modify several ETC reporting requirements. In the Report and Order, the Commission ultimately declined to modify any of the requirements, as some commenters suggest. Instead, as explained above, the Report and Order completely eliminates certain reporting requirements. Thus, the Report and Order does not impose any economic impact on affected entities, including small entities, but only reduces the burdens those entities face. The Commission further notes in the Report and Order that it will continue to evaluate its reporting requirements to identify other requirements that the Commission may be able to streamline or eliminate.

25. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.

26. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, that this Report and Order IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

27. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 CFR Part 54 IS AMENDED as set forth below, and such rule amendments SHALL BE EFFECTIVE immediately upon announcement in the Federal Register of OMB approval.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

FEDERAL COMMUNICATIONS COMMISSION.

Katura Jackson,
Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54 -- UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend §54.313 by revising paragraph (a) to read as follows:

§54.313 Annual reporting requirements for high-cost recipients.

- (a) Any recipient of high-cost support shall provide the following:

- (1) Certification that the carrier is able to function in emergency situations as set forth in §54.202(a)(2);
- (2) A certification that the pricing of the company's voice services is no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the most recent public notice issued by the Wireline Competition Bureau and Wireless Telecommunications Bureau;
- (3) A certification that the pricing of a service that meets the Commission's broadband public interest obligations is no more than the applicable benchmark to be announced annually in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional price charged for a comparable fixed wireline service in urban areas in the states or U.S. Territories where the eligible telecommunications carrier receives support;
- (4) The recipient's holding company, operating companies, affiliates, and any branding (a “dba,” or “doing-business-as company” or brand designation), as well as universal service identifiers for each such entity by Study Area Codes, as that term is used by the Administrator. For purposes of

this paragraph, “affiliates” has the meaning set forth in section 3(2) of the Communications Act of 1934, as amended;

(5) To the extent the recipient serves Tribal lands, documents or information demonstrating that the ETC had discussions with Tribal governments that, at a minimum, included:

- (i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;
- (ii) Feasibility and sustainability planning;
- (iii) Marketing services in a culturally sensitive manner;
- (iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and
- (v) Compliance with Tribal business and licensing requirements. Tribal business and licensing requirements include business practice licenses that Tribal and non-Tribal business entities, whether located on or off Tribal lands, must obtain upon application to the relevant Tribal government office or division to conduct any business or trade, or deliver any goods or services to the Tribes, Tribal members, or Tribal lands. These include certificates of public convenience and necessity, Tribal business licenses, master licenses, and other related forms of Tribal government licensure.

(6) The results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology.

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